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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CARMEN LOBATO,

Plaintiff,

vs.

KILOLO KIJAKAZI,
Acting Commissioner of Social Security,

Defendant.¹

)
) Case No.: 2:21-cv-00658-VCF

)
) **UNOPPOSED MOTION FOR EXTENSION OF**
) **TIME TO FILE CERTIFIED**
) **ADMINISTRATIVE RECORD AND ANSWER;**
) **DECLARATION OF JEBBY RASPUTNIS**

) **(FIRST REQUEST)**
)
)

¹ Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi should be substituted, therefore, for Andrew Saul as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1 Defendant, Kilolo Kijakazi, Acting Commissioner of Social Security (the “Commissioner”), by
2 and through her undersigned attorneys, hereby moves for a 60-day extension of time to file the Certified
3 Administrative Record (CAR) and Answer to Plaintiff’s Complaint. The CAR and Answer to Plaintiff’s
4 Complaint are due to be filed by August 27, 2021. This is the Commissioner’s first request for an
5 extension of time.

6 Defendant makes this request in good faith and for good cause, because the CAR, which must be
7 filed with the Answer and is necessary to adjudicate the case, is not yet available. The public health
8 emergency pandemic caused by COVID-19 has significantly impacted operations in the Social Security
9 Administration’s Office of Appellate Operations (OAO) in Falls Church, Virginia, which is responsible
10 for producing the CAR that must be filed with the Answer, per 42 U.S.C. §§ 405(g) and (h). As detailed
11 in the attached declaration from Jebby Rasputnis, Executive Director of the OAO, beginning mid-March
12 2020, OAO restricted physical access to the Falls Church building, which impacted the production of
13 CARs because physical access was previously required to produce CARs. OAO has since developed and
14 employed a new business process to produce CARs. Much of the difficulty in producing CARs stemmed
15 from the old process of transmitting hearing recordings to vendors for transcription, how the vendors
16 transcribed the recordings, and how the vendors provided the completed transcripts to OAO. OAO
17 changed this process by reworking how the audio files are submitted, seeking additional vendor capacity,
18 and increasing in-house transcription capacity. With the most recent changes, OAO anticipates being
19 able to produce more than 700 transcripts a week, a significant increase over the pre-COVID-19 average
20 of 300–400 hearing transcripts a week.

21 Despite these improvements, OAO still faces a significant backlog of cases due to the combined
22 effects of pandemic-related disruption and a marked increase in district court filings. New case receipts
23 during the last quarter of FY 2020 and the first quarter of FY 2021 increased (on average) to 2,257 case
24 receipts per month, as compared to 1,458 per month for the same period one year before. Despite this,
25 OAO is making progress in its backlog of cases. At the end of January 2021, OAO had 11,109 pending
26 cases. As of August 9, 2021, OAO had 3,760 pending cases, representing a decrease in our backlog of
nearly 7,350 cases over the last seven months. OAO continues to work on increasing productivity by

1 collaborating with our vendors and searching out and utilizing technological enhancements. Defendant
 2 asks this Court for its continued patience as OAO works to increase its efficiency and production of
 3 CARs, reduce the current backlog, and address rising court case filings. Counsel for Defendant further
 4 states that the Office of General Counsel (OGC) is monitoring receipt of transcripts on a daily basis and
 5 is committed to filing Answers as soon as practicable upon receipt and review of the administrative
 6 records.

7 Given the volume of pending cases, Defendant requests an extension in which to respond to the
 8 Complaint until October 26, 2021. If Defendant is unable to produce the Certified Administrative Record
 9 necessary to file an Answer in accordance with this Order, Defendant shall request an additional
 10 extension prior to the due date.

11 On August 20, 2021, the undersigned conferred with Plaintiff's counsel, who has no opposition to
 12 the requested extension.

13 It is therefore respectfully requested that Defendant be granted an extension of time to file the CAR
 14 and Answer to Plaintiff's Complaint, through and including October 26, 2021.

15 CHRISTOPHER CHIOU
 16 Acting United States Attorney

17 Dated: August 23, 2021

18 /s/ Daniel P. Talbert
 19 DANIEL P. TALBERT
 20 Special Assistant United States Attorney
 21 Social Security Administration

22 KRYSTLE S. MCMULLAN
 23 Assistant Regional Counsel
 24 Of Counsel

25 IT IS SO ORDERED



26 UNITED STATES MAGISTRATE JUDGE

8-24-2021

DATED: _____

CERTIFICATE OF SERVICE

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 160 Spear Street, Suite 800, San Francisco, California 94105. I am not a party to the above-entitled action. On the date set forth below, I caused service of **UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE CERTIFIED ADMINISTRATIVE RECORD AND ANSWER; DECLARATION OF JEBBY RASPUTNIS** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which provides electronic notice of the filing:

Hal Taylor, Esq.
haltaylorlawyer@gbis.com
Attorney for Plaintiff

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 23, 2021

/s/ Daniel P. Talbert
DANIEL P. TALBERT
Special Assistant United States Attorney
Social Security Administration